LIBRARY
SUPREME COURT, U. S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

No. 1320

Supreme Court, U.S.
FILED
MAR 26 1970

SOUTH HILL NEIGHBORHOOD ASSOCIATION, JOHN F. DAVIS, JR., TIGE ITT, Et Al.,

Petitioners,

vs.

GEORGE ROMNEY, Secretary of Housing and Urban Development, Et Al.,

Respondents.

On Petition For a Writ of Certiorari to the United States Court of Appeals For the Sixth Circuit

RESPONSE TO MOTION OF NATIONAL TRUST FOR HISTORIC PRESERVATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

J. MONTJOY TRIMBLE,
Central Bank Building,
Lexington, Kentucky 40507
Counsel for Respondents
The City of Lexington, Kentucky, Charles Wylie, Joseph Gravely, Harry Eyre, Fred Fugazzi, Thomas Underwood, Urban Renewal and Community Development Agency of the City of Lexington, Robert B. Pershing, William E. Amberg, Byron Rosenkowitz, D. C. Noble, H. J. Hagler, and Jennie Bryant

Of Counsel:
KINCAID, WILSON, SCHAEFFER, TRIMBLE & HENDRICK,
Central Bank Building,
Lexington, Kentucky 40507

RICHARD S. [illegible],
Municipal Building,
Lexington, Kentucky 40507

JOHN H. BURRUS,
Central Bank Building,
Lexington, Kentucky 40507

WESTERFIELD-BAIRD CO., INCORPORATED, LOUISVILLE, KY.

INDEX.

	PAGE
Prayer	1
Nature of These Proceedings	2
Reasons Why Motion for Leave to File Brief Amicus Curiae Should Not Be Granted	2
1. Pleadings Filed Thus Far Adequately Assert the Positions of the Respective Litigants and Further Pleading in This Matter Will Only Serve to Delay Any Action By This Court	2–3
2. Replication on Behalf of These Respondents to Brief Amicus Curiae of the National Trust for Historic Preservation in the United States in Support of Petition for Certierari Would Occasion Unnecessary Expense to the People of the of the City of Lexington and Fayette County, Kentucky	3–4
3. The Motion for Leave to File Brief Amicus Curiae By the National Trust for Historic Preservation in the United States Is Both Untimely and Unnecessary	4–5
Conclusion	5–6
Certificate of Service	7

NATURE OF THESE PROCEEDINGS.

This action is before this Court on Petition for a Writ of Certiorari to the Sixth Circuit Court of Appeals which has not been granted. The National Trust for Historic Preservation in the United States has now filed with this Court a motion for leave to file Brief Amicus Curiae in support of Petition for a Writ of Certiorari pursuant to Rule 42.

REASONS WHY MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE SHOULD NOT BE GRANTED.

1. Pleadings Filed Thus Far Adequately Assert the Positions of the Respective Litigants and Further Pleading in This Matter Will Only Serve to Delay Any Action By This Court.

It is obvious from an examination of the Briefs filed by both the Petitioner and the Respondent that few words have been spared in presenting what each of the respective parties assert their rights to be. South Hill Neighborhood Association has filed its Petition as a non-profit corporation with its express purpose being the conservation and preservation of the various aesthetic interests of the public directed to that end. By use of the class action devise, South Hill asserts that it represents "historic preservation groups and persons similarly situated." The National Trust for Historic Preservation falls in this class.

Assuming that counsel for Petitioners has fulfilled his ethical obligation to devote himself fully to the interests of his client and to exhibit "warm zeal in the

maintenance and defense of his rights and the exertion of his utmost learning and ability," it must go without saying, that The National Trust for Historic Preservation in the United States is adequately represented in these proceedings.

Thus, any pleading allowed to be filed by such a group, already represented, would only serve to unnecessarily recapitulate that which has previously been asserted, necessitating delay to the Court inasmuch as Respondents, compelled by the same ethical obligation, must reply.

2. Replication on Behalf of These Respondents to Brief Amicus Curiae of the National Trust for Historic Preservation in the United States in Support of Petition for Certiorari Would Occasion Unnecessary Expense to the People of the City of Lexington and Fayette County, Kentucky.

Petitioners, who assert to represent the public in the matter before this Court, in fact are only asserting the aesthetic interests of a miniscule segment of the public. The public interest of primary importance in this litigation is the interest of the people of Lexington and Fayette County, Kentucky, in their efforts to promulgate and pursue a workable urban renewal plan. The history of this litigation discloses clearly the lengths to which the Petitioners have gone to destroy the urban renewal plan of the City of Lexington, not only the realization of the benefits to be derived from the completion of the plan, but its financial security and economic feasibility as well. This mat-

ter has been vigorously contested in the Courts of Fayette County; the Court of Appeals of the State of Kentucky, the United States District Court for the Eastern District of Kentucky, the United States Court of Appeals for the Sixth Circuit, and now in the United States Supreme Court. For all of this, the people of Lexington and Fayette County, Kentucky, have been forced to "pay the bill."

The granting of the motion herein contested would serve no purpose other than to increase the burden already forced upon these taxpayers. Thus, a reply to the Brief of The National Trust for Historic Preservation in the United States is an expense for which they can and should be spared.

3. The Motion for Leave to File Brief Amicus Curiae By the National Trust for Historic Preservation in the United States Is Both Untimely and Unnecessary.

The litigation under consideration in these proceedings presents a question which is not new, nor is it in any way dis-similar to the causes brought before two (2) state courts, two (2) federal courts and now finds its way to this the Supreme Court of these United States. Throughout the gambit of state and federal courts who have been exposed to this particular case, the issues have remained the same. The parties participating have fluctuated but the primary issues for determination have remained unchanged.

There have been numerious occasions when The National Trust for Historic Preservation in the United States could have sought to express their views in any

of the previous forums. There have been numerous opportunities where voluminous memorandum were submitted to these courts and at which time amicus intervention could have been sought. However, such has not been the case. The National Trust for Historic Preservation in the United States has allowed this litigation to go unchallenged, and it is at this late hour that they now seek to assert their position.

Their position, likewise, is not new, for it has been asserted most vehemently by the Petitioners throughout the exhaustive record now in the possession of this Court. It is submitted therefor that an amicus brief addressed to the virtues of historic preservation in the United States is both untimely and unnecessary.

CONCLUSION.

It is respectfully concluded that the Motion of The National Trust for Historic Preservation in the United States for leave to file Brief Amicus Curiae should be denied since:

(a) Pleadings filed thus far adequately assert the positions of the respective litigants and further pleadings in this matter will only serve to delay any action by this Court.

(b) Replication on behalf of these respondents to brief amicus curiae of The National Trust for Historic Preservation in the United States in support of petition for certiorari would occasion unnecessary expense to the people of the City of Lexington and Fayette County, Kentucky.

(c) The motion for leave to file brief amicus curiae by The National Trust for Historic Preservation in the United States is both untimely and unnecessary.

Respectfully submitted,

J. Montjoy Trimble,
Central Bank Building,
Lexington, Kentucky 40507,

Counsel for the Respondents,
The City of Lexington, Kentucky, Charles Wylie, Joseph Graves, Harry Sykes, Fred Fugazzi, Thomas Underwood, Urban Renewal and Community Development Agency of the City of Lexington, Robert E. Featherston, William R. Embry, Bryon Romanowitz, D. C. Noble, H. J. Hagler, and Jennie Bryant.

Of Counsel:

Kincaid, Wilson, Schaeffer, Trimble & Hembree,
Central Bank Building,
Lexington, Kentucky 40507

Richard S. Smith,
Municipal Building,
Lexington, Kentucky 40507

John H. Burrus,
Central Bank Building,
Lexington, Kentucky 40507

CERTIFICATE OF SERVICE.

I, J. Montjoy Trimble, Attorney for the Respondents, The City of Lexington, Kentucky, Charles Wylie, Joseph Graves, Harry Sykes, Fred Eugazzi, Thomas Underwood, Urban Renewal and Community Development Agency of the City of Lexington, Robert E. Featherston, William R. Embry, Byron Romanowitz, D. C. Noble, H. J. Hagler, and Jennie Bryant, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 25th day of March, 1970, I served copies of the foregoing Response of Certain Respondents to the Motion of the National Trust for Historic Preservation in the United States for Leave to File Brief Amicus Curiae on the several parties thereto, as follows:

1. On the United States, by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to The Solicitor General, Department of Justice, Washington, D. C. 20530.

2. On the Department of Housing and Urban Development, by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to its General Counsel, at his office, Washington, D. C. 20510.

3. On the Respondent, Citizens Union National Bank & Trust Company, by mailing a copy in a duly addressed envelope, with first class postage prepaid, to its attorneys of record, A. Gene Oliver of Strother, Oliver & Strother, Citizens Union Bank Building, Lexington, Kentucky 40507.

4. On the Respondents, J. Norwood Hodge and Norwood Construction Company, Inc., by mailing a copy in a duly addressed envelope, with first class postage prepaid, to their attorneys of record, A. B. Rouse of Fowler, Rouse, Measle & Bell, 141 North Upper Street, Lexington, Kentucky 40507.